

**DELEGATION OF AUTHORITY
CLEAN WATER ACT (CWA)**

Section 404 Dredged and Fill Material Permitting

1. AUTHORITY.

- a. To approve grants pursuant to Section 104(b)(3) of the *Clean Water Act* for research, investigations, experiments, training, demonstrations, surveys and studies related to development of wetlands protection programs, including those programs to issue permits for disposal of dredged or fill material (Section 404(g));
- b. To review, comment on and/or object to applications for state permits in a state with an approved assumed Section 404 permit program (Section 404(j));
- c. To approve or deny state program submissions (Section 404(h));
- d. To approve or deny revisions to approved state programs (Section 404(h));
- e. To review and comment on U.S. Army Corps of Engineers Section 404 public notices (Section 404(q));
- f. [this authority is not redelegated to the Regional Administrator]
- g. [this authority is not redelegated to the Regional Administrator]
- h. [this authority is not redelegated to the Regional Administrator]
- i. To make final determinations of applicability of Section 404(f).

2. TO WHOM REDELEGATED.

- a. The authority in 1.a., 1.b., 1.c., and 1.d. is redelegated to the Director, Water Division, or equivalent.
- b. The authority in 1.b. to send the "A" letter is redelegated to the Director, Water Division, or equivalent.
- c. The authority in 1.e. is redelegated through the Director, Water Division, or equivalent, through the Branch Chief, Standards, Assessment, and Watershed Management Branch, or equivalent, and through the Section Chief, Wetlands and Ocean Section, or equivalent, to the Regional Wetlands Coordinator, or equivalent.
- d. The authority in 1.i. is redelegated through the Director, Water Division, or equivalent, and through the Branch Chief, Standards, Assessment, and Watershed Management Branch, or equivalent, to the Section Chief, Wetlands and Ocean Section, or equivalent.

3. LIMITATIONS.

- a. The regional administrator or division director may exercise the authority under paragraph 1.a. for research, investigations, experiments, training, demonstrations, surveys and studies having regional applicability (e.g. development of public education materials for a particular state wetlands protection program, development of wetlands evaluation techniques designed for a specific wetland type found in one region).

- b. The regional administrator, division director, branch chief, or section chief are delegated authority under paragraph 1.b to transmit the consolidated federal comment on a state permit application in an approved, assumed state program. This initial comment letter transmitting the consolidated federal comment to the appropriate state permitting agency is referred to as the "A" letter.
- c. The regional administrator or division director are delegated authority under paragraph 1.b to send letters to the appropriate state permitting agency, either sustaining or removing an outstanding federal objection. This letter either sustaining or removing an outstanding federal objection is referred to as the "B" letter. Concurrence by the AA for OW is required (1) on the first three "B" letters in a region sustaining an objection to the state's permit decision, thus transferring the permit to the Corps of Engineers, and (2) on the first three "B" letters allowing the state to issue a permit over the objections of the Corps of Engineers, U.S. Fish and Wildlife Service, and/or National Marine Fisheries Service.
- d. For permits reviewed after the concurrences in 3.c. above are complete, the appropriate person in the region shall keep the director of the wetlands division informed about "A" letters and potential "B" letters in accordance with coordination procedures developed by the director and the regions.
- e. The regional administrator or division director must obtain the concurrence of the AA for OW, the AA for OECA, or designee, and the General Counsel prior to approving state program submissions. Concurrence may be waived by memorandum; however, each waiver must be authorized by the AA for OW, the AA for OECA, and the General Counsel. The regional administrator or division director is responsible for maintaining a record of any waivers of this limitation and sending a copy of the waiver to the management and organization division.
- f. Concurrence by the AA for OECA or designee is only required when these permits involve enforcement issues.

4. REDELEGATION AUTHORITY.

- a. The authority in 1.a., 1.c., and 1.d. may be redelegated to the section chief level, or equivalent, and no further.
- b. The authority in paragraph 1.b. to send the coordinated federal comment ("A" letter) to the state permitting agency may be redelegated to the section chief level, or equivalent, and no further.
- c. The authority in 1.b. to send the letter sustaining the outstanding federal objection ("B" letter) may not be redelegated.
- d. The authority in 1.b. to send the letter removing the outstanding federal objection ("B" letter) may be redelegated to the section chief level, or equivalent, and no further.
- e. The authority in 1.e. may be redelegated to the regional wetlands coordinator, or equivalent, and no further.
- f. The authority in 1.i. may be redelegated to the section chief level, or equivalent, and no further.
- g. An official who redelegates an authority retains the right to exercise or withdraw the

authority. Redelegated authority may be exercised by any official in the chain of command down to the official to whom it has been specifically redelegated.

5. **SUPERSESSION.** This delegation supersedes R10 2-43 (11/15/2016) and any other delegation of the same authority.

6. **ADDITIONAL REFERENCES.**

- a. 40 CFR Part 30, 31.
- b. EPA Order 1000.23.
- c. Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency concerning the determination of the geographic jurisdiction of the Section 404 program and the application of the exemptions under Section 404(f) of the Clean Water Act, dated January 19, 1989.
- d. EPA Delegation 2-43.

May 16, 2019
Date

CHL 9
Chris Hladick
Regional Administrator